



**U.S. Citizenship  
and Immigration  
Services**

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 10017162

Date: NOV. 27, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a physician, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). Section 203(b)(2)(B)(ii) of the Act provides that such a waiver shall be afforded to a physician who meets several conditions, including that a Federal agency or a state department of public health has determined that his work was in the public interest.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not provided the required determination from the department of public health in his state indicating that his work was in the public interest.

On appeal, the Petitioner submits additional evidence and a brief asserting that he is eligible for a physician national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will sustain the appeal.

**I. LAW**

Section 203(b) of the Act states, in pertinent part:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the

sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. Subject to clause (ii), the Attorney General<sup>1</sup> may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

(ii) Physicians working in shortage areas or veteran facilities.

(I) In general. The Attorney General shall grant a national interest waiver pursuant to clause (i) on behalf of any alien physician with respect to whom a petition for preference classification has been filed under subparagraph (A) if –

(aa) the alien physician agrees to work full time as a physician in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; and

(bb) a Federal agency or a department of public health in any State has previously determined that the alien physician's work in such an area or at such facility was in the public interest.

As indicated above, section 203(b)(2)(B)(ii)(I)(aa) of the Act provides a national interest waiver for certain physicians who agree to work in an area designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs. In addition, section 203(b)(2)(B)(ii)(I)(bb) states that the physician must show that a Federal agency or a state department of public health has previously determined that his work in such an area or at such a facility was in the public interest.

Furthermore, the implementing regulations at 8 C.F.R. § 204.12 set forth the evidentiary requirements to establish eligibility for the physician national interest waiver. Specifically, as relevant here, the regulation at 8 C.F.R. § 204.12(c)(3) provides that a petitioner must submit “[a] letter (issued and dated within 6 months prior to the date on which the petition is filed) from a Federal agency or from the department of public health (or equivalent) of a State or territory of the United States or the District of Columbia, attesting that the alien physician's work is or will be in the public interest.”

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<sup>1</sup> Pursuant to section 1517 of the Homeland Security Act of 2002 (“HSA”), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA “shall be deemed to refer to the Secretary” of Homeland Security. See also 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

## II. ANALYSIS

The record indicates that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue is whether he meets the requirements for a physician national interest waiver set forth in section 203(b)(2)(B)(ii)(I)(bb) of the Act and the implementing regulation at 8 C.F.R. § 204.12(c)(3).

The Petitioner initially provided a September 2017 letter from the [ ] Department of Health indicating that he will be practicing at University [ ] in a Health Professional Shortage Area and a Medically Underserved Area. This letter further stated: “[The Petitioner] will be providing direct patient care services a minimum of 40 hours a week beginning August 28, 2017, to the medically underserved in [ ] and surrounding communities. The [ ] Department of Health supports the national interest waiver to be filed on behalf of [the Petitioner].”

In denying the petition, the Director noted that the letter presented from the [ ] Department of Health “did not attest that [the Petitioner’s] work was in the public interest as required by the regulation. . . . Although the letter attests that [the Petitioner] will work in a medically underserved area, it does not include language that attests to [his] work being in the public interest.”

With the appeal, the Petitioner submits an April 2019 letter from [ ] State Primary Care Officer, [ ] Department of Health, stating: “[ ] Department of Health supports the national interest waiver application and finds it in the public interest for [the Petitioner] to practice at [ ] Health [ ]” In conjunction with the initial letter, this updated letter clarifying that the Petitioner’s work at [ ] Health [ ] was in the public interest is sufficient to satisfy the requirements of section 203(b)(2)(B)(ii)(I)(bb) of the Act and the regulation at 8 C.F.R. § 204.12(c)(3).

## III. CONCLUSION

The Petitioner has overcome the Director’s basis for denial and established he is eligible for a national interest waiver.

ORDER: The appeal is sustained.